



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,433	01/27/2004	Werner Franz Reichert	LWEP:123 US	1514

7590 07/12/2005

Howard M. Ellis
SIMPSON & SIMPSON, PLLC
5555 Main Street
Williamsville, NY 14221

EXAMINER

AMARI, ALESSANDRO V

ART UNIT	PAPER NUMBER
----------	--------------

2872

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,433

Applicant(s)

REICHERT ET AL.

Examiner

Alessandro V. Amari

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-21 and 27-31 is/are rejected.
- 7) ☒ Claim(s) 9-11 and 22-26 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/27/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 4, 5, 14, 15, 29 and 30 are objected to because of the following informalities:

Regarding claims 4, 14 and 29, the phrase, "at least one corresponding foot on the stand base of the microscope" is unclear. A clearer recitation suggested would be "at least one corresponding foot of the microscope on the stand base". Claims 5, 15 and 30 inherit the same issue.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17- 21 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzkus et al US 6,717,724 in view of McGrath et al US 5,810,301.

In regard to claim 17, Mitzkus et al teaches (see Figures 1-4) a microscope carrier comprises a body (2, 6), a left and a right hand rest (1) attached to the body as described in column 2, lines 54-67.

However, in regard to claim 17, Mitzkus et al does not teach that the left and right hand rests pivot freely and independently of one another.

In regard to claim 17, McGrath et al teaches (see Figures 1-3) that left and right hand rests (34) pivot freely and independently of one another (see pivot point on axis 54) as described in column 9, lines 10-18.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the handrests of Mitzkus et al pivot freely and independently as taught by McGrath et al in order to provide individual adjustability for the user so as to improve the ergonomics of the microscope carrier.

Regarding claim 18, Mitzkus et al teaches (see Figures 1-3) that the left and the right hand rest are attached by means of a hinge system (8) to a left and a right lateral cheekpiece of the body (left and right sides of the body 2 which face the handrests 1).

Regarding claim 19, Mitzkus et al teaches (see Figures 1-3) that the left and the right hand rest can be hooked (via element 8) onto a left and a right lateral cheekpiece of the body (left and right sides of the body 2 which face the handrests 1).

Regarding claim 20, Mitzkus et al teaches (see Figure 1) that the hand rests each have a front edge (3); and the hand rests taper from a certain segment toward the front edge as shown in Figure 1.

Regarding claim 21, Mitzkus et al teaches (see Figures 1, 2) that the microscope carrier is equipped with several pivotable supports (4, 5) that make available at least a three-point support (see distal end of element 6) of the microscope carrier on a bench surface as shown in Figures 1 and 2 and as described in column 3, lines 1-15.

Regarding claim 31, Mitzkus et al teaches (see Figure 1) at least one opening (7) for attaching the microscope is provided in the body of the microscope carrier as described in column 2, lines 63-64.

4. Claims 1-8, 12-16 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzkus et al US 6,717,724 in view of McGrath et al US 5,810,301 and further in view of Kline et al US 5,195,705.

In regard to claims 1 and 12, Mitzkus et al teaches (see Figures 1-4) an ergonomic microscope comprising a microscope carrier that comprises a body (2, 6), a left and a right hand rest (1) attached to the body as described in column 2, lines 54-67.

However, in regard to claims 1 and 12, Mitzkus does not teach that the left and right hand rests pivot freely and independently of one another.

In regard to claims 1 and 12, McGrath et al teaches (see Figures 1-3) that left and right hand rests (34) pivot freely and independently of one another (see pivot point on axis 54) as described in column 9, lines 10-18.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the handrests of Mitzkus et al pivot freely and independently as taught by McGrath et al in order to provide individual adjustability for the user so as to improve the ergonomics of the microscope carrier.

Regarding claims 1, 12 and 27-30, Mitzkus et al in view of McGrath teaches the invention as set forth above, however, in regard to claims 1, 12 and 27, Mitzkus in view of McGrath et al does not teach a stand which has a stand base corresponding to an external contour of the body.

In regard to claims 1, 12 and 27, Kline et al teaches (see Figures 1, 4) a stand base (20) that defines an external contour as shown in Figures 1 and 4. Regarding claims 2 and 13, Kline et al teaches (see Figures 2, 4) that the body or stand base possesses an external contour that corresponds substantially to the external contour of the stand base as shown in Figure 2.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the stand base with the external contour as taught by Kline et al in the microscope carrier of Mitzkus et al in view of McGrath et al in order to provide more stability and rigidity for the microscope carrier.

Regarding claims 3 and 28, Mitzkus et al teaches that the body comprises a housing open toward the bottom as shown in Figures 2 and 3.

Regarding claims 4 and 29, Mitzkus et al teaches (see Figure 1) that the housing has a surface in which is embodied at least one depression (7) that serves to receive at least one corresponding foot on the stand base of the microscope as described in column 2, lines 63-64.

Regarding claims 5, 15 and 30, Mitzkus et al teaches (see Figure 1) that the depressions are configured as cutouts or holes, and serve to orient the microscope on the microscope carrier as described in column 2, lines 63-64.

Regarding claim 6, Mitzkus et al teaches (see Figure 1) a cutout for ventilation or supply is provided on the body (see rectangular hole in element 2).

Regarding claim 7, Mitzkus et al teaches (see Figure 1) at least one opening (7) for attaching the microscope is provided in the body of the microscope carrier as described in column 2, lines 63-64.

Regarding claims 8 and 16, Mitzkus et al teaches (see Figures 1, 2) that the microscope carrier is equipped with several pivotable supports (4, 5) that make available at least a three-point support (see distal end of element 6) of the microscope carrier on a bench surface as shown in Figures 1 and 2 and as described in column 3, lines 1-15.

Regarding claim 14, Mitzkus et al teaches (see Figures 1, 2, 3) the body comprises a housing open toward the bottom as shown in Figures 2 and 3, and the housing defines a surface in which is embodied at least one depression (7) that serves to receive at least one corresponding foot on the stand base of the microscope as described in column 2, lines 63-64.

Allowable Subject Matter

5. Claims 9, 10, 11, and 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 9 and 22 are allowable over the prior art for at least the reason that the prior art fails to teach or reasonably suggest, "a first and a second pivotable support are actuatable independently of a third pivotable support" as set forth in the claimed combination.

Claims 10 and 23 are allowable over the prior art for at least the reason that the prior art fails to teach or reasonably suggest, "an operating knob and a lever are provided on the body, the first and the second support being pivotable by way of the operating knob, and the third support by way of the lever" as set forth in the claimed combination. Claim 11 is also allowable based upon its dependence on claim 10 and claims 24-26 are allowable based upon their dependence on claim 23.

The prior art of record, Mitzkus et al, Kline et al and McGrath et al teach an ergonomic microscope comprises a stand which has a stand base that defines an external contour; a microscope carrier that comprises a body and a left and a right hand rest, wherein the left and the right hand rest are attached to the body so as to pivot freely and independently of one another wherein the carrier has several pivotable supports. However, the prior art of record does not teach a first and a second pivotable support are actuable independently of a third pivotable support or an operating knob and a lever are provided on the body, the first and the second support being pivotable by way of the operating knob, and the third support by way of the lever and there is no motivation or teaching to modify this difference as derived.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alessandro V. Amari whose telephone number is (571) 272-2306. The examiner can normally be reached on Monday-Friday 8:00 AM to 5:30 PM.

Art Unit: 2872

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ava/14
08 July 2005

Alessandro Amari
Alessandro Amari
Examiner AU 2872